

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF APRIL 1998

PRESENT

THE HON'BLE MR. JUSTICE Y. BHASKAR RAO

AND

THE HON'BLE MR. JUSTICE S.R. BANNURMATH

CIVIL REVISION PETITION NUMBER 236 OF 1998

Between:

M/s. Palanjee Estate, A Tenants-in-common, consisting of Smt. Pearl Cariappa, Shri. Shiv Cariappa, and Shri. Babla Cariappa, Chettalli Post, Kodagu Dist., represented by Smt. Peal Cariappa, A Member of the Tenants-in-common.

(By Sri. K.A. Hemaraj - Adv. for .. PETITIONER
Petr.).

And

1. Addl. Commissioner of Commercial Taxes, Mysore Zone, Sheshadri House, Diwan Road, Mysore - 570 024.
2. The Joint Commissioner of Commercial Taxes (Appeals), Vaniyia Therige Bhavan, Opp: Nehru Maidan, Mangalore-575 001.
3. Asst. Commissioner of Agrl. Income Tax, Somawarpet, Kodagu Dist.

.. RESPONDENTS

(By Sri. D'Sa - HCGA - for Respts.).

This Civil Revision Petition is filed under Sec.55(1) of the KARNATAKA AGRICULTURAL INCOME-TAX ACT, 1957, against the order dt. 5.12.97 passed in No. SMR/833: 64/97-98 on the file of the Addl. Commissioner of Commercial Taxes, Mysore Zone, Mysore.

This Civil Revision Petition having been heard and reserved for orders, this day, BHASKAR RAO J., made the following:

ORDER

O R D E R

This petition is filed to revise the order dated 5.12.1997 passed by the Addl. Commissioner of Commercial Taxes, Mysore Zone, Mysore, in ADDL.CCT.MYS.MLN. AIT.SMR.64/97-98, for the assessment year 1982-83, which is marked as Annexure 'A'.

2. The facts of the case are, that the Dealer has filed return of income in the status of Tenants-in-common for the assessment year 1982-83. The notice under Section 20 of the Karnataka Agricultural Income-tax Act was issued on 10.5.1984 treating the status of the assessee as association of persons and proposed to levy tax. It is contended by the assessee that his status has to be treated as tenant-in-common only and the same was rejected and he was treated as association of persons and against that, Appeal is filed. The Appellate Authority allowed the Appeal and remanded the matter to the Respondents with a direction to assess the appellant individually. The Addl. Commissioner of

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Commercial Taxes while exercising Revisional Power under Section 35 of the Karnataka Agricultural Income-tax Act, has issued notice stating that the order of the Appellate Authority is not correct and after considering the objections passed an order setting aside the order under Appeal and directed the Assessing Authority to levy the Agricultural Income-tax on the Income of Rs.44,233/- as one unit, considering status as Tenants-in-common. Against that, the present Revision Petition is filed.

3. Learned Counsel for the petitioner contended that, the individuals are co-owners of the property and therefore as they being tenants-in-common, the assessment ought to have been made on each individual instead of treating them as tenants-in-common or association of persons. On the other hand, learned Government Advocate contended that the tenants-in-common which were earlier in the definition of persons 'was omitted' and therefore, the same cannot be now available to be taxed taking them as individuals. By reading Sub-Section 3 of Section 2 of the definition of 'Person',

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it is manifest that co-owners have to be taxed as association of persons and the order under Appeal is quite correct.

4. In view of the above contentions, the important question that arises for consideration is;

"Whether the tenant-in-common has to be taxed individually or as association of persons."

5. The facts of the case show that, the property owned by the co-owners as the property jointly purchased though as shares are stated, there is no actual division. Section 3 of the Karnataka Agricultural Income-tax Act, 1957 is a charging Section, provided that the Agricultural income is a tax at the rate specified in the schedule to the Act for the financial year in accordance with the provisions of the Act, on the total Agricultural income of the previous year of every person. Section 2(p) defines a "person" as follows: *un*

"2(p): "Person" means any individual or association of individuals, owing or holding property for himself or for any other, or partly for his own benefit and partly for another, either as owner, trustee, receiver, common manager, administrator or executor or in any capacity recognised by law, and includes an undivided Hindu Mitakshara family, an Aliyasanthana family or branch, a Marumakkattayam tarwad or a tavazhi possessing separate properties, or a Nambudri or other family to which the rule of impartibility applies, a firm or company, an association of individuals, whether incorporate or not, and any institution capable of holding property."

Therefore, the benefit of levy of tax on the shares of each is not available. Therefore, the status of tenants-in-common continues to be that of Association of Persons. Therefore, making assessment of the petitioner as association of persons is not unlawful or illegal and it is in accordance with the provisions of the Act.

6. Learned Counsel for the Petitioner contended that, while ~~was~~ exercising the power under Section 35 of the said Act, the Revisional Authority cannot go into the merits of the case and decide the same beyond the scope of Section 35 of the Act. The scope of Section 35 is already decided by this Court in number of cases and held that wherever there is erroneous view of the

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appellate authority which causes loss to the Revenue and method of assessment is not proper, the Revisional Authority can exercise suo motu Revision. In view of the said circumstances, we do not see any merits in this Petition.

Accordingly, this Revision Petition is dismissed.

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